IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Shanker Lal Vs. State of Rajasthan & ors.

S.B.CIVIL WRIT PETITION NO.2453/2006

Date of order : 15th May 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.M.A.Siddiqui for the petitioner

BY THE COURT:

The petitioner describing himself as 'Shanker Lal adopted son of Shri Rawat Ram, aged about 41 years, resident of Bilara, District Jodhpur' has submitted this writ petition seeking to question judgment and decree dated 13.04.1993 passed by the Assistant Collector, Bilara in Revenue Suit No.7/1983 under Section 175 of the Rajasthan Tenancy Act; dated 15.09.1997 passed by the Revenue Appellate Authority, Jodhpur in Appeal Nos.151/1993 and 167/1993; and dated 15.02.2006 passed by the Board of Revenue for Rajasthan, Ajmer in Appeal Nos.33/98 and 34/98 without even joining the said Revenue Authorities as proforma parties to this writ petition.

Brief facts relevant for determination of the questions sought to be raised in this petition are that a revenue suit was filed before the Assistant Collector, Bilara by the Tehsildar, Bilara under Section 175 of the Rajasthan Tenancy Act, 1955 ('the Act' hereinafter) with the submissions, inter alia, that the agricultural land comprised in khasra Nos.5931 and 5929/6443 measuring 2 bighas and 1 bigha 13 biswas respectively was in the khatedari of Rawat Ram son of Panna Ram Bhambhi who was a member of Scheduled Caste but he transferred the land to the defendant No.2 (petitioner) who was not a member of scheduled caste and mutation was effected on 19.05.1982 but the same was invalid being in contravention of Section 42 of the Act. It was prayed that the defendants be dispossessed and land be recorded as a government land. It appears that defendants Smt.Dhapu wife of Rawat Ram and Shanker Lal (petitioner) in their written statement admitted that the land in question was in the khatedari of Rawat Ram but contended that provisions of Section 42 of the Act were not violated inasmuch as Rawat Ram and his wife Dhapu took the petitioner in adoption by way of registered adoption deed dated 16.12.1981. The defendants further submitted that after the death of Rawat Ram, his wife Dhapu and adopted son Shanker Lal became entitled to the land that has continued in possession of Dhapu; that possession of the land was not transferred to defendant No.2 and the suit was incompetent. It appears that the wife of Rawat

Ram, Mst.Dhapu also expired and her daughter Hasturi wife of Kana Ram Meghwal was substituted as defendant in her place and she also filed a written statement to the effect that Section 42 of the Act was not violated as the defendant No.2 was taken in adoption on 16.12.1981; and that the land was earlier in possession of Rawat Ram and thereafter continued in possession of Smt.Hasturi. It was again maintained that the possession of the land was never transferred to a non-scheduled caste person.

After recording evidence, learned Assistant Collector found that the land was in the name of Rawat Ram Bhambhi, a scheduled caste person from whom the land was sought to be transferred by way of a gift deed dated 16.12.1981; and on the basis of the said gift deed, mutation was effected on 19.05.1982 in the name of Shanker Lal Patel who was not a scheduled caste person. It was, therefore, held that the transfer was clearly in violation of Section 42 of the Act and could not be sustained. After rejecting other contentions, learned Assistant Collector was of opinion that once transfer was held to be invalid, the mutation effected on its basis was rendered void and it was proper to record the land in the name of available heirs of Rawat Ram. The suit was accordingly decreed and it was ordered that the mutation dated 19.05.1982 be cancelled and the land be recorded in the name of true heirs of deceased Rawat Ram and Dhapu and possession be taken over from Shanker Lal and be delivered to such heir of Rawat Ram.

The judgment and decree dated 13.04.1993 aforesaid were put to challenge by way of two appeals before the Revenue Appellate Authority, Jodhpur being appeal No.151/1993 filed by the aforesaid Smt.Hasturi daughter of Rawat Ram; and another being appeal No.167/1993 filed by the State. Significantly, the judgment and decree dated 13.04.1993 were not challenged by the present petitioner, Shanker Lal; and on the contrary, the petitioner chose to remain absent before the Revenue Appellate Authority. In the appeal filed on behalf of daughter of Rawat Ram, it was contended that Shanker Lal (petitioner) was never in possession of the land in question and the same was continuously in possession of the appellant Smt.Hasturi. It was contended that learned trial court did not commit any error in recording the land in the name of the heirs of previous khatedar but direction for enquiry about the heirs was not proper inasmuch as the appellant Hasturi was the heir of Rawat Ram and, therefore, it was prayed that the land be recorded in her name. The State, on the other hand, contended that the directions about recording the land in the name of the heirs of Rawat Ram were not proper inasmuch as the land has continued in possession of Shanker Lal and, therefore, it was required to be recorded as government land.

It is relevant to notice at this juncture itself that no appeal was filed by the petitioner and the appeals submitted by Smt.Hasturi and

the State were maintained for the reliefs different and contrary to the interest of present petitioner Shanker Lal. While Smt.Hasturi claimed that the land be recorded in her name; on the other hand the State contended that the land ought to be recorded as government land. So the transfer was concerned, neither of the appellants made any suggestion that the transfer be maintained as valid.

The learned Revenue Appellate Authority by the judgment and decree dated 15.09.1997 dismissed the appeal filed by the State but partly allowed the appeal filed by Smt.Hasturi and ordered that there was no necessity of any further enquiry about the legal heirs of Rawat Ram and the land be recorded in the name of the said daughter of Rawat Ram.

The judgment and decree dated 15.09.1997 (Annex.3) passed by the Revenue Appellate Authority, Jodhpur were challenged before the Board of Revenue by way of two appeals being appeal Nos.33/1998 and 34/1998, both filed by the State; and fundamentally it was contended that the land ought to have been recorded as government land. From the judgment dated 15.02.2006 (Annex.4) of the Board of Revenue, it appears that a contention was raised on behalf of the respondents that the land has come to the respondent No.2 (petitioner) by way of succession as he was adopted by Rawat Ram and, therefore, proceedings under Sec.175 could not have been adopted. The learned Members of the Board were of opinion that the land having been found to have been

transferred in contravention of Section 42 of the Act, both the tenant and the transferee were required to evicted and the land was required to be recorded as government land. The judgment and decree passed by the authorities below were set aside and the land was ordered to be recorded as government land after dispossessing the respondents No.1 and 2.

The judgment and decree aforesaid are sought to be questioned in this writ petition by the petitioner Shanker Lal with the submissions that the issue of adoption has not been considered by the authorities below; that the petitioner was adopted by the original khatedar and his wife as per the provisions of Hindu Adoption and Maintenance Act, 1956 and the adoption deed was registered and without quashing of such adoption, there was no occasion for the authorities below to hold the transfer to be in contravention of Section 42 of the Act; that the petitioner is Hindu and has been adopted by another Hindu and there being no prohibition of adoption of a non-scheduled caste person by a scheduled caste person, Section 42 of the Act would have no application at all because the petitioner became son of original khatedar Rawat Ram and has got every right on the land in dispute; and that the petitioner is in possession of the land in question since the year 1982.

Having heard learned counsel for the petitioner at length and having perused the material placed on record and the law applicable to the case, this Court is clearly of opinion that the impugned

judgment and decree disclose no error and this writ petition remains fundamentally bereft of substance and deserves to be dismissed.

It appears that being aware of the fundamental falsity of his claim, the petitioner did not file any appeal against the judgment and decree dated 13.04.1993. As noticed hereinbefore, of course two appeals were filed before the Revenue Appellate Authority, one by Smt.Hasturi daughter of Rawat Ram and another by the State through Tehsildar; but both these appeals have not proceeded on any ground which could be said to be in the interest of the petitioner, and on the contrary, both the appeals have proceeded squarely contrary to the interests of the petitioner. While the appellant Smt.Hasturi claimed that land was in her possession and she ought to have been recorded as khatedar and no enuiry was requisite; on the other hand it was claimed by the Tehsildar that land ought to stand resumed to the government. Significantly, the petitioner did not even put his appearance in appeals before the Revenue Appellate Authority.

In the aforesaid view of the matter, this Court is clearly of opinion that so far the petitioner is concerned, judgment and decree dated 13.04.1993 passed by the Assistant Collectdor and the finding that the land was transferred in violation of Section 42 of the Act from a member of scheduled caste to a non-scheduled caste person stood final, conclusive and binding on the petitioner who never challenged the same. Once the finding of violation of Section 42 of

the Act becomes final; whether the land is recorded in the name of daughter of Rawat Ram or whether it stands resumed to the government; so far the petitioner is concerned, he cannot be acceded any right to question such treatment of the land.

So far entitlement of the petitioner is concerned, the same having already been pronounced against and such finding having become final for the petitioner having failed to challenge the same, the petitioner has no right to seek reopening of the matter by way of this writ petition in the name of challenge to the order passed by the Board of Revenue.

The present one being the proceedings under Article 227 of the Constitution of India, interference in the orders passed by the authorities below is called for only when the impugned orders could be said to be suffering from errors apparent on the face of record and leading to manifest failure of justice. The impugned orders do not suffer from any such shortcomings; rather, by way of the impugned orders, an attempt by the petitioner to somehow grab the land of a scheduled caste person has been curbed against and the rule of law has been maintained.

On an examination of the documents placed on record i.e. the adoption deed Annex.1 and the gift deed Annex.5, this Court is satisfied that such documents had only been created to defeat the provisions of Section 42 of the Act and suffer from fundamental lacunae. It appears that in his over anxiety to somehow get hold of

the land of a scheduled caste person, despite he being not a member of scheduled caste, the petitioner or the persons acting for him, attempted to adopt the proceedings which by themselves proclaimed their invalidity. On 16.12.1981 itself, two documents had been got registered from Rawat Ram; one being deed of adoption (Annex.1) and another being a deed of gift (Annex.5). It has been alleged in the adoption deed that Shanker Lal aged 17 years was chosen and preferred by Rawat Ram and wife Dhapu Devi and a proposal was put before the parents of Shanker Lal who had agreed on the proposal and Shanker Lal himself has also agreed and, therefore, he was adopted by way of ceremonies on Sawan Sud 15 of current Samvat Year. On this very day of 16.12.1981, the same Rawat Ram executed the gift deed stating that Shanker Lal was his adopted son and he was regularly serving him to his satisfaction and for being happy with his services, the said land of khasra Nos.5931 and 5929/6443 was being gifted by him to the donee Shanker Lal; and that donee Shanker Lal has agreed to the proposal and has taken over the land in possession. It is inexplicable that if at all the petitioner was taken as an adopted son of Rawat Ram and there was no other son of Rawat Ram; on the same date of execution of the adoption deed, where was the necessity for executing a gift deed? Moreover, according to the adoption deed, Shanker Lal was 17 years of age on 16.12.1981; and then, it has consistently been maintained by the defendants in these proceedings that possession

of the land was not transferred to the petitioner. The recitals in the gift deed of the donee having agreed to the proposal of gift and having taken over the land in his possession are clearly falsified. Shanker Lal (petitioner) on the very assertions in the adoption deed could not have validly stated such acceptance of the gift; and then, there does not appear any endorsement of acceptance on the gift deed.

Having regard to all the facts and circumstances of the case, this Court is satisfied that no case for interference under Article 227 of the Constitution of India is made out. The writ petition remains totally bereft of substance and deserves to be dismissed.

The writ petition fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

MK